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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,824	01/15/2004	Carol L. Berger	29243.00	5510
22465	7590	04/24/2006	EXAMINER	
PITTS AND BRITTIAN P C			HOEY, ALISSA L	
P O BOX 51295			ART UNIT	PAPER NUMBER
KNOXVILLE, TN 37950-1295			3765	

DATE MAILED: 04/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/757,824

Applicant(s)

BERGER, CAROL L.

Examiner

Alissa L. Hoey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02/16/06.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-14 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-14 and 16-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. This is in response to amendment received on 02/16/06. Claims 1-5, 7-9, 11-14, 17 and 19 have been amended. Claim 10 has been withdrawn and claim 15 is withdrawn. Claims 1-9, 11-14 and 16-20 are finally rejected below.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-7, 14 and 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Crawford (US 4,008,350).

In regard to claim 1, Crawford teaches a foot covering for enclosing a forefoot, instep, heel and ankle while wearing footwear lacking an enclosed heel (10). A first fabric material (12, 14) having a toe portion and an instep portion for receiving and enclosing the wearer's forefoot (figure 1). The first fabric material (12, 14) further having a heel base portion adapted to extend beneath the wearer's heel (figures 1 and 2: column 2, lines 65-68). A second fabric material (18, 20) disposed to cover the wearer's instep, heel and ankle, the second fabric material having a leading edge (figures 1 and 2). The second fabric material (18, 20) having a thickness greater than the first fabric material and having an ankle portion extended a sufficient length above the heel base portion of the first fabric layer to encircle the wearer's ankle (figures 1 and 2). The second fabric

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material cooperating with the heel base portion to encircle the wearer's heel. The second fabric material leading edge joined to the instep and heel base portions of the first fabric layer. Whereby the thin first material (12, 14) encloses the wearer's forefoot and would inherently minimize stretching of footwear worn with the sock due to it's nylon construction. The second fabric material (18, 20) covers the wearer's instep, heel and ankle for warmth and is capable of being worn with footwear lacking an enclosed heel.

In regard to claim 2, Crawford teaches the first fabric material (12, 14) including the toe, instep and heel base portions extending to encircle the foot and forming a substantially continuous sole portion of the thin elastic material (figure 1: column 2, lines 65-68). The thin elastic material being nylon would inherently have a low coefficient of friction thereby maximizing ease of insertion of the wearer's forefoot enclosed by the first fabric material (12, 14) into footwear lacking an enclosed heel without stretching a forefoot portion of the footwear.

In regard to claim 3, Crawford teaches the upper half of the instep portion encircling the wearer's foot proximal of a medial arch, an instep and an outer side of the wearer's foot without extending along the sole portion of the first fabric material (figure 1).

In regard to claim 4, Crawford teaches the first fabric material (12, 14) includes a first material selected from the group consisting of a natural fibrous material interwoven with a synthetic elastic textile material (column 2, lines 65-68).

In regard to claim 5, Crawford teaches the second fabric material (18, 20) including the leading perimeter disposed (12, 14) along an upper portion of the wearer's instep (figures 1 and 2). The second fabric material (18, 20) extending distally from the leading perimeter to enclose the heel and ankle of the wearer's foot without enclosing a sole of the wearer's foot, thereby only the first fabric material encloses the sole of the wearer's foot (figure 1).

In regard to claim 6, Crawford teaches the second fabric material (18, 20) including an elastic material interwoven with a second material selected from the group consisting of wool, cotton, silk, nylon, acrylic fibers, polyester fibers and polypropylene fibers (column 2, lines 65-68).

In regard to claim 7, Crawford teaches the second fabric material (18, 20) including a second layer of material disposed in overlying relation of the transition seam and extending to the heel base portion of the first fabric material. The second layer material selected from the group consisting of wool, cotton, silk, nylon, acrylic fibers, polyesters, polypropylene fibers and elastic fibers (column 4, lines 57-64).

In regard to claim 14, Crawford teaches a sock (10) enclosing a wearer's foot and ankle and is capable of being worn with footwear lacking a heel enclosure. A tubular sock including a first fabric layer (12, 14) composed of a thin resiliently stretchable material sized to enclose the wearer's foot in respective toe, forefoot, instep and heel portions (figure 1: column 2, lines 65-68). A second fabric layer (18, 20) of material having a thickness greater than the first fabric layer (figure 2). The second fabric layer (18, 20) having a leading edge circumferentially disposed proximal of the

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instep portion in overlying orientation to the first fabric layer (12, 14), and the second fabric layer having body and ankle portions sized to cover the heel and ankle of the wearer's foot (figures 1 and 2). The first fabric layer (12, 14) enclosing the wearer's forefoot in thin nylon material which inherently minimizes stretching of footwear. The second fabric layer (18, 20) covers the wearer's heel and ankle for warmth and is capable of being worn with footwear lacking the heel enclosure.

In regard to claim 16, Crawford teaches the first fabric layer (12, 14) including the thin stretchable material having a low coefficient of friction thereby minimizing ease of insertion of the wearer's forefoot enclosed by the fabric layer into a forefoot portion of footwear lacking the heel enclosure without stretching of the forefoot portion of footwear by the wearer's forefoot covered by the first fabric layer (figure 1: column 2, lines 65-68).

In regard to claim 17, Crawford teaches the instep portion encircles the wearer's foot proximal of a medial arch, an instep and an outer side of the wearer's foot (figure 1).

In regard to claim 18, Crawford teaches the thin stretchable material being selected from the group consisting of a natural fibrous material interwoven with a synthetic elastic textile material (column 2, lines 65-68).

In regard to claim 19, Crawford teaches the second fabric layer (18, 20) including a fabric material having a thick density and having the leading edge circumferentially disposed proximal of the instep portion of the first fabric layer the second fabric layer extends distally of the leading edge (24) to enclose lateral surfaces of the wearer's heel and ankle (figure 1 and 2).

In regard to claim 20, Crawford teaches the second fabric layer (18, 20) includes material selected from the group consisting of wool, cotton, silk, nylon, acrylic fibers, polyester fibers, polypropylene fibers and elastic fibers (column 2, lines 65-68).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crawford.

In regard to claim 8, Crawford teaches a foot covering (10) enclosing a wearer's foot and ankle that is capable of being worn with footwear lacking a heel enclosure (figure 1). A first fabric material (12, 14) composed of a thin resiliently stretchable material sized to enclose the wearer's foot within respective toe, forefoot and instep portions (figure 1: column 2, lines 65-68). A second fabric (18, 20) of material having a thickness greater than the first fabric material and attached in overlying orientation to and edge of the first fabric material the transition seam of the first fabric material and said second fabric material having body and ankle portions sized to cover the heel and ankle of the wearer's foot (figures 1 and 2). The first fabric material (12, 14) encloses the wearer's forefoot in thin nylon material which inherently minimizes stretching of footwear. The second fabric material (18, 20) covers the wearer's heel and ankle for warmth and is capable of being worn with footwear lacking the heel enclosure.

However, Crawford fails to teach the first fabric material having a leading edge.

It would have been obvious to have provided the first fabric material to have a leading edge attached to the second fabric material or any point of the first fabric material attached to the second fabric material. There is no support in the specification detailing that the first fabric material has a leading edge that is attached to the second fabric material. The only reference the specification makes to the connection of the first and second material portions is the edge of the second fabric material adjoined to the first fabric material. Since there is no teaching in the specification that the first material edge is attached to the second material edge, the connection of the two can be connected at an edge of the first material portion or anywhere along the body of the first material portion.

In regard to claim 9, Crawford teaches the first fabric material (12, 14) comprises a material with a low coefficient of friction thereby maximizing ease of insertion of the wearer's forefoot enclosed by the first fabric material into footwear lacking the heel enclosure without excessive stretching of a forefoot portion of the footwear by the wearer's forefoot covered by the first fabric material (figure 1: column 2, lines 65-68).

In regard to claim 10, Crawford teaches the transition seam (24) of the first fabric layer (12, 14) extending circumferentially around a mid-portion of the sock (figure 1). The mid-portion encircling the wearer's foot proximal of a medial arch, an instep and an outer side of the wearer's foot (figure 1).

In regard to claim 11, Crawford teaches the thin stretchable material being selected from the group consisting of a natural fibrous material interwoven with a synthetic elastic textile material (column 2, lines 65-68).

In regard to claim 12, Crawford teaches the second fabric material (18, 20) including a fabric material having a thick density and having the perimeter edge attached to the first fabric material (figures 1 and 2). The second fabric material (18, 20) extending distally from an interface between the first and second fabric materials to enclose lateral surfaces of the wearer's heel and ankle (figure 1).

In regard to claim 13, Crawford teaches the second fabric material (18, 20) including material selected from the group consisting of wool, cotton, silk, nylon, acrylic fibers, polyester fibers, polypropylene fibers and elastic fibers (column 2, lines 65-68).

Response to Arguments

6. Applicant's arguments filed 02/16/06 have been fully considered but they are not persuasive.

I) Applicant argues that Crawford fails to teach the second fabric material disposed to cover the wearer's heel.

Examiner notes that the claims do not call for the entire heel to be covered and as constructed as long as the second material cover's a portion of the wearer's heel, it reads on the limitation as claimed. The heel as defined in Merriam Webster's Collegiate Dictionary (tenth edition) defines a heel as, the back of the human foot below the ankle and behind the arch. The second material portion of Crawford covers the area of a foot below the ankle and behind the arch (see figure 1).

II) Applicant argues that Crawford does not disclose the first fabric material having only toe, instep and heel base portions.

Examiner notes that the claims do not require the first fabric material to include **only** the toe, instep and heel base portions. Further, there is no support in the specification detailing that the first fabric material has a leading edge that is attached to the second fabric material. The only reference the specification makes to the connection of the first and second material portions is the edge of the second fabric material adjoined to the first fabric material. Since there is no teaching in the specification that the first material edge is attached to the second material edge, the connection of the two can be connected at an edge of the first material portion or anywhere along the body of the first material portion.

Conclusion

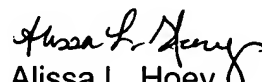
7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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